

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARTINA RIVERA, DEFENDANT AND APPELLANT.

G. R. No. 16443. March 21, 1921

Ponente: MALCOLM, J.

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MALCOLM, J.:

When Leona Laciste endeavored to set fire to the house of Martina Rivera in which the two small children of the latter were sleeping, the two women grappled and Leona Laciste was boloed to death by Martina Rivera. As a result, a criminal prosecution for murder was instituted in the Court of First Instance of La Union against Martina Rivera and after due trial she was found guilty of the lesser crime of homicide and was sentenced to eight years and one day of prision mayor, with the accessory penalties provided by article 61 of the Penal Code, to indemnify the heirs of the deceased in the sum of P500, and to pay the costs.

Two questions are raised by the appeal. The one more fundamental in nature revolves about the point of whether or not the defendant should be exempted from all responsibility because of having acted in defense of her person, her rights, and her descendants. The second question is incidental in nature and relates to the finding of the court that the qualifying circumstance of cruelty, because of having deliberately and inhumanly increased the sufferings of the offended party, was present.

Article 8 of the Penal Code exempts any one from criminal liability who acts in defense of his person or rights, provided that the following circumstances concur: (1) Unlawful aggression; (2) reasonable necessity for the means employed to prevent or repel it; (3) lack of sufficient provocation on the part of the person defending himself. Anyone who acts in defense of the person of his descendant is similarly exempted. In our view of the case, the first and last requisites above-mentioned concur, but the second is lacking.

A man's house is his castle. When a person is attacked in his own house, he has a right to protect it, and those within it, from the intrusion or attack. He may repel force by force in defense of person, habitation, or property, against one who manifestly intends or endeavors by violence or surprise to commit a felony, such as arson, upon either. In such case one is not obliged to retreat, but may pursue his adversary until he has secured himself from danger. (People vs. Lewis [1897], 117 Cal., 186, citing East's Pleas of the Crown, p. 271, and Foster's Crown Cases, chapter 3, p. 273, where the rule is well stated.)

In this instance, the accused acted in defense of her person, her home, and her children. The crime of arson was about to be committed, and there was present the element of danger to the occupants of the habitation. But there was not present any reasonable necessity for killing the assailant. The accused proceeded beyond the limits of immunity when, after the assailant was out of the house, and prostrate on the ground, she persisted in wounding her no less than fourteen times. The case is, consequently, covered by article 86 of the Penal Code.

The lower court committed an error in taking into consideration the qualifying circumstance of cruelty. The number of wounds on the body of a deceased are not conclusive evidence of the presence of this circumstance. (U. S. vs. Palermo [1915], 31 Phil., 425; decision of the Supreme Court of Spain of December 9, 1889.) On the

contrary, the evidence discloses more nearly the mitigating circumstance of passion and obfuscation.

It is our unmistakable duty to find the defendant guilty of homicide. It is, however, just as certainly our duty to view with leniency the action of the defendant in view of the provocative nature of the aggression. The provisions of article 86 of the Penal Code permit of the exercise of considerable discretion by the courts.

Judgment is affirmed, with the modification that in place of eight years and one day of prision mayor, the defendant and appellant shall be sentenced to three years of prision correccional, and shall, in addition, pay the costs of this instance. So ordered.

Mapa, C. J., Araudio, Street, and Villamor, JJ., concur.

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